84-568

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Case No.

SUPREME COURT OF THE UNITED STATES

October Term 1984

In re:

Layne A. Lindberg and
Barbara Jean Lindberg,

Debtors

Phillip D. Armstrong, Trustee of the Estates of Layne A. Lindberg and Barbara Jean Lindberg,

Petitioner

vs.

Layne A. Lindberg and Barbara Jean Lindberg,

Respondents

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

SUPPLEMENTAL APPENDIX

Counsel for Petitioner:

Phillip D. Armstrong
300 U.S. Courthouse
100 1st St. SW
Minot, ND 58701
701/838-9422

Counsel for Respondents:

Irvin Nodland
P.O. Box 1398
Bismarck, ND 58502
701/223-4022

TABLE OF CONTENTS

ORDER of the Honorable Bruce M. Van Sickle, Judge of the United States District Court, District of North Dakota, filed December 20, 1982 (ruling for trustee) . . 1

ORDER of the Honorable Bruce M. Van Sickle, Judge of the United States District Court, District of North Dakota, filed January 13, 1983 (ruling against trustee on debtors' petition for re-hearing) 7

ORDER of the United States Court of Appeals for the Eighth Circuit denying trustee's petition for rehearing, filed July 12, 1984. .11

SUPPLEMENTAL APPENDIX

Following are two orders of the Honorable Bruce M. Van Sickle, Judge of the United States District Court, District of North Dakota. The first order was filed December 20, 1982. The second order was filed January 13, 1983.

ORDER

On July 7, 1980, the debtors filed for voluntary bankruptcy under Chapter 13, 11 U.S.C. § 1301 et seq. At that time debtors claimed a homestead exemption for a residence in New Town, North Dakota, with a $20,000 equity.

On March 2, 1982, the Bankruptcy Court[1] entered an order converting the

1. The Honorable Harold O. Bullis, United States Bankruptcy Court, District of North Dakota, District of Minnesota, Sixth Division.

the case from Chapter 13 to Chapter 7, which stated that debtors consented to the conversion. Debtors then filed a new set of schedules in which they claimed a homestead exemption for a residence in Stanley, North Dakota, which claimed equity up to $80,000.

The trustee in the case objected to the change in homestead exemption, arguing that the homestead exemption filed at the beginning of the bankruptcy action is binding on the debtor. In support of this proposition, trustee cites 11 U.S.C. § 348(a):

> Conversion of a case from a case under one chapter of this title to a case under another chapter of this title constitutes an order for relief under the chapter to which the case is converted, but except as provided in subsections (b) and (c) of this section, does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.

(Emphasis added)

The bankruptcy court rejected this argument, stating as follows:

> While Section 348 of the Bankruptcy Reform Act, 11 U.S.C. § 348, provides that conversion from Chapter 13 to Chapter 7 relates back to the date of the original petition for purposes of the commencement of the case or for the order for relief, since the Debtors are not allowed exemptions under Chapter 13, their claim must necessarily be made at or after the time of conversion.

In re Layne A. Lindberg, et al., No. 80-05270, slip op. at 3 (Bkr. Ct., D. N.D. Aug. 24, 1982).

Apparently, what is behind the court's reasoning is the belief that it is unfair to hold the Debtors to a earlier statement of exemptions made under a Chapter 13 petition, since that statement of exemptions is not required by law as it is in the case of liquidation under Chapter 7. In other words, the court is saying that §348 only relates to filings that were required by law at the time the bankruptcy action

was commenced.

Yet for all practical purposes the law requires that the exemptions be filed at the time of the commencement of the Chapter 13 proceedings, since the bankruptcy court is required under 11 U.S.C. § 1325(a)(4) to determine that unsecured creditors would not receive less under Chapter 13 than they would under Chapter 7. To make this determination the bankruptcy court must ascribe liquidation value to all nonexempt property of the estate. Re Keckler, 3 BR 155, 6 B.C.D. 14 (F. B.C., N.D. Ohio 1980). From this one would conclude that the law by implication requires the statement of exemptions at the time of a Chapter 13 filing.

On this line of reasoning one would conclude that the exemptions given in connection with a Chapter 13 petition are

binding on the debtor when the petition is converted to Chapter 7. This conclusion is supported by several policy considerations.

First, courts do not want to encourage debtors to make statements of exemptions for a Chapter 13 petition that they do not stand behind. Under a rule allowing the change of exemptions in a conversion from Chapter 13 to Chapter 7, the debtor then would have an incentive to convert a proceeding to Chapter 7 just to qualify for a larger homestead exemption. For this reason, the debtor might choose in advance to use a different homestead for purposes of the Chapter 13 and plan to move to another if things don't go as planned, and then convert to Chapter 7.

Second, it is important to have a fixed time at which the assets of the estate are determined so that creditors

may rely on those assets in making future plans. Allowing this change of homestead exemption down the road, throws needless uncertainty into the creditors' future planning.

Third, the debtor, when filing for bankruptcy, is aware that the filing will affect his assets and takes the risk that if he is not able to continue under Chapter 13, he will be forced to liquidate under Chapter 7. He must make his filing in light of the future consequences.

While this court is mindful of the harsh effect its ruling will have on the Lindbergs, it is most appropriate for the reasons stated above, to find that the exemptions are fixed from the time of the initial bankruptcy filing.

The order of the bankruptcy court is reversed and the case is remanded to

the bankruptcy court for proceedings in accordance with this order.

ORDER

Under Rule 812 of the Rules of Bankruptcy Procedure, Title 11 U.S.C., Debtors move this court for a rehearing of its order filed December 20, 1982. In that order, the court reversed the ruling of the bankruptcy judge and ordered the matter remanded with the understanding that the first homestead exemption the debtors had filed was binding on them in their petition for liquidation under Chapter 7 of the Bankruptcy Act. The court reversed the bankruptcy judge in light of 11 U.S.C. § 1325(a)(4), which would protect the creditors, and 11 U.S.C. § 348, which affixes the interests of the parties as of the date of filing.

However, in their motion for a re-

hearing, Debtors argue that the bankruptcy judge could have justified his ruling under Bankruptcy Rule 110, without dealing with the question of statutory interpretation. Bankruptcy Rule 110 provides:

> A voluntary petition, schedule, or statement of affairs may be amended as a matter of course at any time before the case is closed. The court may on application or motion of any party in interest or on its own initiative, order any voluntary petition, schedule, or statement of affairs to be amended. Every amendment under this rule shall be filed in the same number as required of the original papers and the court shall give notice of the amendment to such persons as it may designate.

This court did not address this argument in its order of December 20, and thus shall do so now.

This court finds Debtors' argument convincing. Debtors' filing of new schedules can reasonably be construed as an application for amendment. The changing of the homestead exemption can properly be considered to be an amendment

of a "petition, schedule, or state of affairs."[1] And the bankruptcy judge gave all interested parties notice of these changes.

Further, the bankruptcy judge did not abuse his discretion in granting the amendment. The conversion to Chapter 7 was itself initiated by the request of creditors; the judge gave the creditors an opportunity to make their objections heard; and the amendment could be justified because of the change in the Debtor's economic condition, due to a decline in the oil business.

The Debtors' petition for rehearing is granted.

For the above reasons, the court

1. The Advisory Committee's Note indicates that amendment might be used to claim additional exempt property. 11 U.S.C. Bankr. R. 110.

reverses itself, confirms the order of the bankruptcy court, and dismisses the appeal.

United States Court of Appeals

For the Eighth Circuit

83-1310-ND September Term, 1983

In re: Layne A. Lindberg, Et al.,	)
	)
Debtors.	)
	)
Phillip D. Armstrong, Etc.,	)
	)
Appellant,	)
	)
Layne A. Lindberg, Et al.,	)
	)
Appellees.	)

Appeal from the United States
District Court for the
District of North Dakota

The Court, having considered appellant's petition for rehearing en banc and being now fully advised in the premises, is hereby denied.

July 12, 1984

Counsel for Petitioner:

Phillip D. Armstrong
300 U.S. Courthouse & Federal Bldg.
100 1st St. SW
Minot, ND 58701
701/838-9422

Counsel for Respondents:

Irvin Nodland
P.O. Box 1398
Bismarck, ND 58502
701/223-4022